IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.577 OF 2004

IN

SUIT NO.2038 OF 2000

...

Z.M. Fernandes & Anr. ...Plaintiffs

v/s

M.P.D'Mello & Ors. ...Defendants

...

Mr.D.J. Lulia for the Plaintiffs.

Mr.M.U. Pandey for Defendants Nos. 1 to 3,4, 6 to 8 and 12.

Mr.S.Kelwali for Defendant No.13.

...

CORAM: D.K.DESHMUKH, J.

DATED: 10TH DECEMBER,2004

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. The Plaintiffs have filed this suit for partition and the Plaintiffs are seeking interim orders to operate in relation to several properties. The Plaintiffs are claiming their rights in the properties left behind by their father, who expired in the year 1963. The dispute between the Plaintiffs and their brothers, who are Defendants, arose, according to the Plaintiffs, in the year 1989. But the suit for partition was filed in the year 2000.

2. The only explanation that has been given for not filing the suit immediately after 1989 is that the suit was filed in the City Civil Court for injunction in relation to two of the properties. In my opinion, inaction on the part of the Plaintiffs of not instituting the suit for partition immediately and seeking interim orders for protection of their interest in the property disentitles the Plaintiffs to any interim reliefs which are in the discretion of

the Court. It is pertinent to note here that even according to the Plaintiffs many of the properties to which this Notice of Motion relates have been dealt with by the Defendants before 1989. So interim orders that are sought by the Plaintiffs, if granted would result in disturbing the interest which has been created long back. It is further pertinent to note here that four properties which according to the Plaintiffs are encumbered, there are also protective orders made by this Court either in this proceedings or in other proceedings.

3. Taking overall view of the matter,specially considering the conduct of the Plaintiffs of not diligently pursuing their rights, in my opinion, it will not be in the interest of justice to grant interim relief in favour of the Plaintiffs.

4. Notice of Motion disposed of.

Ad-interim order which is presently operating shall continue to operate for a period of eight weeks from today.

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